



Friday, November 9, 2018  
State of Illinois  
Illinois Commerce Commission

**RE: 18-NOI-01-Notice of Inquiry Regarding Electric Vehicles- Reply Comments  
Americans for Prosperity Illinois.**

Acting Commissioner Palivos:

Americans for Prosperity (AFP) appreciates the opportunity to provide reply comments to the Illinois Commerce Commission Notice of Inquiry regarding electric vehicles. After reviewing initial comment submissions, we noticed that, with some exceptions –most notably the Illinois Attorney General Office—commenters have largely ignored questions regarding the consumers’ equal rights and protections.

**1. Barriers & EV Charging Infrastructure Ownership.**

Most conspicuously, we observe a risky and fundamental misconception about the proper role that regulated utilities should have in the electric vehicle market and in the supply of electric vehicle supply equipment (EVSE).

This misconception becomes particularly apparent when reading the comments submitted by The Alliance of Transportation Electrification:

*"The Alliance believe that utilities regulated by the Commission, as well as other non-jurisdictional utilities, have a vital role to play in kick starting the EV infrastructure market, and helping to transform this market in an accelerated way" <sup>1</sup>*

According to this view, which is also espoused by other organizations<sup>2</sup>, the Commission should exert its authority for the purpose of assisting and enabling private companies to increase their market penetration, sales, and revenues. We respectfully disagree with this view.

Under the logic advanced by these organizations, it could be argued that the Commission should also exert its authority to help kickstart an array of different businesses. Why should data centers not be entitled to an “economic development tariff” that waives demand charges in the interest of more rapidly expanding these markets in Illinois?

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<sup>1</sup> Initial Comments of The Alliance for Transportation Electrification p.11

<sup>2</sup> Comments of Sierra Club and Natural Resources Defense Council filed in response to the Notice of Inquiry Regarding Electric Vehicles.

Contrary to the arguments made by these commenters, we find that the Commission's regulatory powers have no role in transforming or intervening in the market with the explicit goal of adding a technology or product. The transformation of the transportation sector, and every sector, should be driven by consumer choice and market forces.

As noted by the comments submitted by the Attorney General's Office, the EV market is still unsettled. And despite the very optimistic projections that have been brought up to the Commission, the inescapable reality is that "these questions cannot be answered today without engaging in extensive speculation."<sup>3</sup>

Engaging in this type of speculation is both permissible and desirable for private sector actors responding to market signals and that are already providing these services to the marketplace. What is not justifiable is doing so at the expense of the equal rights of the people of Illinois.

Our concern for the resulting cross-subsidization that would inevitably result from utilities owning and/or operating charging infrastructure is only intensified by the structure of incentives that would come as a result, where the risk-free decisions of guaranteed rate of return monopolies would inevitably result in suboptimal investment decisions, compared to those of private sector actors.

Additionally, we find that the rebates and other incentives being recommended by different commenters are not prudent. Apart from being socially regressive, they would immediately become an unfair burden for the rest of ratepayers. Why should someone be required to help pay for their neighbors' EV home charging port?

Ultimately, as expressed in our initial comments, Illinois has low barriers to entry and regulatory certainty for market participants. The Illinois Public Utilities Act clarifies that:

**"An entity that furnishes the service of charging electric vehicles does not and shall not be deemed to sell electricity and is not and shall not be deemed a public utility** notwithstanding the basis on which the service is provided or billed. If, however, the entity is otherwise deemed a public utility under this Act, or is otherwise subject to regulation under this Act, then that entity is not exempt from and remains subject to the otherwise applicable provisions of this Act."<sup>4</sup>[emphasis added]

This statute explicitly states that providing an electric charging service is not a "service" of a public utility. Does the Commission have authority to mandate and cross-subsidize non-utility services? Although the statute specifies a public utility is not precluded from providing electric vehicle charging service and is still considered a public utility under the Act, the preceding language makes clear that electric vehicle charging services is not an electric utility service; therefore, the Commission must require that any investment by a public utility in electric vehicle charging infrastructure must be done without using ratepayer funds.

Furthermore, as pointed out in Elevate Energy's initial comments:

"(...) Illinois is currently the only state with hourly electricity pricing programs available to all ratepayers. These programs ([ComEd's Hourly Pricing](#) and [Ameren Illinois Power Smart Pricing](#)) empower EV owners to leverage off-peak charging to significantly

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3 Illinois Attorney General's Office p.2

4 220 Ill. Comp. Stat. §§ 5/3-105(c).

decrease the overall cost of car ownership, and they create an emerging market space for aiding technologies.”<sup>5</sup>

Considering these facts, we suggest the Commission makes clear that the appropriate role for utilities in this nascent market should be one of a “facilitator,” as described in a recent report from the Rocky Mountain Institute:

“the utility treats EV charging like other potential load, providing nondiscriminatory electric service when and where requested, but not engaging in the business of vehicle charging”.<sup>6</sup>

In our view, only the facilitator framework would fully protect the equal rights of all consumers while leaving the door for innovation and competition open for future market participants.

## **2. Education and Consumer Awareness**

In response to the questions regarding barriers to increased transportation electrification, one party suggested that:

*“Public awareness of the consumer options and cost savings of EV ownership is crucial to EV expansion. Utilities are ideally situated to provide the public and auto dealers with information and tools that would promote EV ownership. As explained in a recent Synapse report, Utilities are well suited to addressing the public awareness barriers to EV ownership.”<sup>7</sup>*

Following this rationale, The Alliance for Transportation Electrification goes a step further suggesting that:

*“the O&M cost associated with a well-designed program for consumer awareness and education, with appropriate limits and oversight by the Commission, should be categorized as “above the line” and included in the total revenue requirement.”<sup>8</sup>*

We find that there is no valid reason to allow cost recovery for these types of expenses if utilities were to decide to engage in such activities. The notion that advertising expenses for the benefit of private entities should be recovered from customers is appalling. Such practices are and should continue to be deemed under Illinois code, “promotional practices”. Under no circumstances should the Commission allow cost recovery for such expenses.

If carmakers and EVSE’s providers find there is a lack of public awareness with regard to their products and services, it should not be incumbent on the ratepayers of Illinois to underwrite such expenses. We strongly urge the commission to unambiguously clarify this point in the interest of protecting ratepayers.

## **Conclusion:**

We appreciated the interest of the Commission in exploring policy concepts regarding electric vehicles. As the Commission deliberates on the appropriate framework for Illinois, we urge you to embrace the principle of equal rights for all ratepayers that we have brought forward.

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5 Elevate Energy Initial Comments p.2

6 Garrett Fitzgerald Chris Nelder & James Newcomb, “[Electric Vehicles as Distributed Energy Resources](#)” Rocky Mountain Institute (2017)

7 Comments of Sierra Club and Natural Resources Defense Council, filed in response to the Commission’s Notice of Inquiry Regarding Electric Vehicles.p.11

8 Initial Comments of The Alliance for Transportation Electrification p.6

The free market is the fairest way to allocate resources, and in this case, is the only guarantee that no customer would end up on the losing side of this policy question.

As we suggested, the “facilitator” model is the only framework that would prevent socially regressive programs that hurt the majority of consumers.

The existing regulatory environment for EV charging and EVSE is preferential to widescale intervention, and over time it will lead to the organic growth of what currently constitutes a niche market for high-income households. The Commission should acknowledge these facts, hold firm and not heed calls for corporate welfare from a range of stakeholders that would like to see this institution use its regulatory power to get special treatment and receive profits and benefits via government fiat.

We hope this body would recognize that the more than 679,000 households in Illinois experiencing an unaffordable energy burden<sup>9</sup> are the real priority for the Commission, not “range anxiety” for EV drivers.

Adding a myriad of new socially regressive subsidies in clear transgression of the equal rights of all ratepayers seems like a very unfitting policy choice for regulators entrusted with the public confidence.

We look forward to seeing an open, thriving, just and reasonable electric vehicle marketplace in Illinois.

Thank you for the opportunity to address this important issue, and we look forward to decisions that protect the equal rights of consumers by not yielding to calls for corporate welfare and regressive subsidization.

If we can be of any assistance, please do not hesitate to reach out directly to me at: ANelms@Afphq.org

Sincerely,

Andrew Nelms  
State Director  
Americans for Prosperity-Illinois

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<sup>9</sup> Fisher, Sheehan, and Colton. The Home Energy Affordability Gap 2017. 2nd Series. Published April 2018